DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 05-0001
SALES TAX
For 2003

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. <u>Sales and Use Tax</u>—Like Kind Exchange; Trade in Allowance on the Purchase of an Aircraft

Authority: IC 6-8.1-5-1(b); IC 6-2.5-3-2; IC 6-6-6.5-2; IC 6-2.5-3-6(d)(2); IC 6-2.5-5-24(a)(6); IC 6-2.5-1-6; *Black's Law Dictionary*, Seventh Edition.

Taxpayer protests the denial of the trade in allowance on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased New Aircraft and sold Old Aircraft using a qualified intermediary to facilitate an IRC § 1031 like-kind exchange. Taxpayer sought to avoid the triggering of capital gain. Taxpayer purchased New Aircraft for $1.4 million from New Seller using Intermediary and sold Old Aircraft to Old Buyer for $997,975 using Intermediary. Intermediary was paid $1,000 to handle the transaction and $402,025 to cover the difference in price between the selling price of Old Aircraft and the purchase price of New Aircraft. Intermediary is not an aircraft dealer—but specializes in structuring transactions to facilitate an IRC § 1031 like kind exchange so as to avoid the triggering of the capital gains tax—which is an income tax. The title to New Aircraft was not transferred from Intermediary to Taxpayer, but was transferred from New Seller to Taxpayer. The title to Old Aircraft was not transferred from Taxpayer to Intermediary, but was transferred from Taxpayer to Old Buyer.

Taxpayer registered New Aircraft with the Department and paid the sales and use tax on $402,025—the difference between what Taxpayer claims is the purchase price of $1.4 million and the "trade in" value of $975,975. The Department billed Taxpayer for the whole purchase price of New Aircraft—stating there was no like kind exchange and thus no application of a trade in allowance.

Taxpayer filed a protest; a hearing was held; this letter of findings is issued.

I. <u>Sales and Use Tax</u>—Like Kind Exchange; Trade in Allowance on the Purchase of an Aircraft

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). Indiana imposes an excise tax, known as the use tax on the storage, use, or consumption of an aircraft if the aircraft:

(1) is acquired in a transaction that is an isolated or occasional sale; and
(2) is required to be titled, licensed, or registered by this state for use in Indiana.

See IC 6-2.5-3-2. Taxpayer acquired New Aircraft in an isolated sale and the aircraft is required to be registering in Indiana for use. IC 6-6-6.5-2 requires an Indiana resident who owns an aircraft to register the aircraft with the Department within 31 days after the purchase date. IC 6-2.5-3-6(d)(2) requires a taxpayer to pay the use tax due on aircraft to the Department at the time the taxpayer registers the aircraft—if the sales tax was not paid at the time of purchase. Because Taxpayer purchased New Aircraft in an isolated sale, Indiana sales tax was not collected—and thus use tax is due. IC 6-2.5-5-24(a)(6) grants an exemption to the sales and use tax due for those amounts representing a reciprocal exchange for tangible personal property of like kind. A "like kind exchange" is defined in IC 6-2.5-1-6.

(a) "Like kind exchange" means the reciprocal exchange of personal property between two (2) persons, when:
  (1) the property exchanged is of the same kind or character, regardless of grade or quality; and
  (2) the persons exchanging the property both own the property prior to the exchange.
(b) A "like kind exchange" may be a part of a transaction involving additional consideration other than the exchanged property.
(c) Notwithstanding subsection (a), a "like kind exchange" does not occur when:
  (1) the transaction involves more than two (2) persons; or
  (2) one (1) party to the transaction, through agreement or negotiation with the second party, acquires personal property for the primary purpose of exchanging that property for like kind property held by the second party.

To be a like kind exchange, several requirements must be met. The exchange must not involve more than two parties. In this case, these are the parties involved: Taxpayer, Intermediary, New Seller, and Old Buyer. There are four parties. Taxpayer exchanged consideration with Intermediary, but exchanged titles with New Seller and Old Buyer. The word *reciprocal* is defined in *Black's Law Dictionary*, Seventh Edition as *mutual* and *bilateral*. IC 6-2.5-1-6(c)(1) excludes Taxpayer's transaction as a like kind exchange. Additionally, Taxpayer admitted both at the hearing and in documentation submitted to the Department that the transactions were executed through an intermediary so as to secure a qualified IRC § 1031 like kind exchange for income tax purposes. Indiana sales and use tax code does not reference back to IRC § 1031. What is defined and qualifies as a like kind exchange in IRC § 1031 for federal income tax purposes and what is defined and qualifies for a like kind exchange in IC 6-2.5-1-6 for Indiana sales and use tax purposes are not the same. Income tax and sales & use tax are two different types of taxes—each with their own statutes, regulations, and definitions.

Taxpayer did not engage in a reciprocal like kind exchange for sales and use tax purposes. No offset for a "trade in" exists. Use tax is to be paid on the whole purchase price of New Aircraft.

FINDING

For the reasons stated above, Taxpayer's protest is denied .

AAG/JMM/JMS—051404